

96 JUNE 24

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO on the)
relation of the State Engineer,)
Plaintiff,)
v.)
RAMON ARAGON, et al.,)
Defendants.)

JUNE 24, 1966

No. CIV 7941 SC
RIO CHAMA
ADJUDICATION SUIT
Section I (Mainstream)

SUMMARY OF TESTIMONY
OF ACEQUIAS' LAY WITNESSES

The Acequia de Chamita, Acequia de Hernandez, and Acequia de los Salazares may call all or some of the following lay witnesses to provide testimony and evidence at the Mainstream Section priority date trial: Henry Salazar, J. Richard Salazar, Joseph M. Salazar, Juan D. Archuleta, Richard M. Salazar, and Fidel Trujillo.

The aforesaid lay witnesses will provide testimony and evidence regarding their genealogies; the oral history of the settlement of the communities of the lower Chama Valley in the vicinity of the Acequias Chamita, Hernandez, and Los Salazares; and the importance of adjudicating the correct priority dates in recognition of the settlement by Onate and other colonists from 1598 until the Pueblo Revolt of 1680. These lay witnesses may also testify about certain other matters such as relevant place names,

Spanish language terms, historical facts, and prior court decrees.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify a true copy of the foregoing pleading was mailed to Patrick Simpson; Special Master, Vickie Gabin; Darcy Bushnell and to the individuals and parties identified on the attached list on this 24th day of June, 1996.

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EXHIBIT E //

**IRRIGATION AT THE CONFLUENCE OF THE RÍO GRANDE AND RÍO
CHAMA: THE ACEQUIAS DE CHAMITA, SALAZAR AND
HERNÁNDEZ, 1600-1680**

Submitted to:

**Rio de Chama Acequias Association
Española, New Mexico**

**Submitted by:
Stanley M. Hordes, Ph.D.
HMS Associates, Inc.**

June 24, 1996

IRRIGATION AT THE CONFLUENCE OF THE RÍO GRANDE AND RÍO CHAMA: THE ACEQUIAS DE CHAMITA, SALAZAR AND HERNÁNDEZ, 1600-1680

by

**Stanley M. Hordes, Ph.D.
HMS Associates, Inc.**

Introduction:

For centuries the fertile floodplain at the confluence of the Río Grande and Río Chama has attracted settlers seeking to establish agricultural communities. Prior to the 1846 invasion and annexation of New Mexico by the United States, the area was intensively cultivated by Pueblo Indians and Spanish colonists alike. Many of those who today harvest corn, vegetables, chile and alfalfa, trace their roots continuously back over several hundred years to these early farmers.

The first Europeans to set eyes on what is today known as the Española Valley were members of Francisco Vázquez de Coronado's expedition (1540-1541), the first significant venture on the part of the Spanish crown into New Mexico. Based in the Tiguex region of the Middle Río Grande Valley, Vázquez de

Coronado's lieutenant, Tristan de Arellano, sent a company northward in search of provisions in the fall of 1541. Under the command of Captain Francisco de Barrionuevo, the party stopped at Yunque, the future site of San Gabriel and the area served by the Acequia de Chamita. The chronicler of the expedition described "two very beautiful pueblos which were on opposite sides of the river . . . [with] abundant provisions," referring to Yunque, on the west bank, and San Juan, on the east bank.¹

Neither the Rodríguez/Sánchez Chamuscado expedition of 1581-1582, nor that of Espejo/Beltran in 1582-1583 appear to have reached as far north as the Río Chama. The unauthorized campaign led by Gaspar Castaño de Sosa seven years later, however, did extend to the Española Valley. In the winter of 1590, Castaño's party arrived at San Juan Pueblo, finding it covered with snow so deep that a horse could no longer travel through it. The inclement weather precluded any detailed

¹George P. Hammond and Agapito Rey, *Narratives of the Coronado Expedition, 1540-1542* (Albuquerque: University of New Mexico Press, 1940), p. 244.

account of the resources in the region, save that "the pueblo was very strong in people and supplies."²

The first permanent colonizing enterprise to New Mexico, led by Governor and Adelantado Juan de Oñate, left Santa Bárbara in January of 1598, with some 129 soldiers, some with their wives and families, and six Franciscan missionaries, over three thousand head of livestock and a full complement of supplies. More than six months later, on July 11, Oñate arrived at the confluence of the Río Grande and Río Chama, and established his headquarters at the Pueblo of San Juan. Exactly one month later, work began on an acequia on the east bank of the Río Grande, the labor provided by some one thousand five hundred Pueblo Indians.³

Settlement and Irrigation in the Area Served by the Acequia de Chamita,

1600-1680:

By the fall of 1600, demographic pressures had forced Oñate to move his capital from San Juan to the west bank of the Río

²Hammond and Rey, *The Rediscovery of New Mexico, 1580-1594: The Explorations of Chamuscado, Espejo, Castaño de Sosa, Morlete, and Leyva de Bonilla and Humaña* (Albuquerque: University of New Mexico Press, 1966), pp. 283-285.

Grande, which also constituted the north bank of the Río Chama. The settlement of Yuque-Yunque took on the new name of San Gabriel de Yunque, and formed the basis for the community that would ultimately be known as Chamita. The new colony used an acequia from the Río Chama for the irrigation of crops. Seventeenth-century Franciscan historian Juan de Torquemada chronicled this important development:

San Gabriel . . . is situated between two rivers, and the waters of the smaller of the two irrigates wheat, barley, corn, and other crops that they plant in gardens.⁴ [Exhibit 1]

Thus irrigation of lands that today are served by the Acequia de Chamita began as early as 1600.

At some point around 1607, the decision was made by Spanish royal authorities to transfer the capital of New Mexico some thirty-five miles south to Santa Fe. While some residents of San Gabriel followed the seat of government to the its new location, it is clear that the old capital was by no means abandoned. A 1608 report by Captain Pedro Martínez de Montoya, outlining the services that he had performed for the royal

³Hammond and Rey, *Oñate, Colonizer of New Mexico, 1595-1628* (Albuquerque: University of New Mexico Press, 1953), pp. 322-323.

⁴ Fray Juan de Torquemada, *Monarquía Indiana* (Madrid: Nicolas Rodríguez Franco, 1723; Mexico City: Editorial Salvador Chaves Hayhoe, 1943), Vol. I, p. 672, "San Gabriel . . . está

authorities over the previous several years, contained references to his having spent time in Santa Fe, while building a house at "la Villa de San Gabriel," serving there as *alcalde ordinario*.⁵ [Exhibit 2]

The Pueblo Revolt of 1680 resulted in the destruction of virtually all locally-generated records for New Mexico from the early seventeenth century until 1680. In order to reconstruct settlement patterns in the colony during this time period, historians have had to piece together documentary fragments from archival sources in Mexico and Spain, as well as New Mexico documentation emanating from the immediate post-Revolt era. Scarce as they may be, these records demonstrate clearly a continuous pattern of settlement at San Gabriel de Yunque through the seventeenth century.

Documentation from the Archivo General de la Nación (National Archives) of Mexico surrounding the 1662 imprisonment by the Holy Office of the Inquisition of a New Mexico military

situado entre dos Ríos, y con las Aguas del menor de los dos, se riegan los Trigos, Cevada, y Mais, y los demás cosas, que se siembran en las huertas."

⁵Museum of New Mexico, History Library of the Palace of the Governors, Juan Martinez de Montoya Collection, "D. Juan Saez y Maurigade, vecino de esta corte, sobre Que se les incluya en la descendencia directa del Capitan D. Juan Martínez de Montoya, Descubridor, Conquistador, y Poblador que fue en las Americas, y Gobernador del Nuevo México," Petition by Juan Martínez de Montoya to Governor Cristóbal de Oñate, Santo Domingo, August 10, 1608

officer, Francisco Gómez Robledo, was particularly helpful in shedding light on the occupation of the site in the early and mid-century. After Gómez Robledo was arrested in Santa Fe, Inquisition officials conducted an inventory of his estate. Among his papers were two significant, and related, documents. The first was a petition by his father, Francisco Gómez, for a grant of an *estancia* at Yunque; the second was a title held by Francisco Gómez Robledo to grant of an *estancia* at "el Pueblo de San Juan de los Teguas," presumably the same piece of land, located at San Gabriel de Yunque.⁶ [Exhibit 3] These two documents demonstrate a continuous occupation of the site currently served by the Acequia de Chamita by two generations of the same family from the early seventeenth century until at least 1662, eighteen years prior to the Pueblo Revolt.

The court-appointed historian, Dr. John Baxter, has disputed the account offered in the paragraph cited above. In a letter dated May 18, 1994 to Peter Thomas White, Special Assistant Attorney General, Office of State Engineer, Dr. Baxter claimed that the aforementioned *estancia* "continued to be

(Copy made in Madrid, March 18, 1785); "Santa Fe: Est. 1610 1607," *El Palacio*, Vol. 100, no. 1 (Winter 1994-1995), pp. 15-16.

"unoccupied" in 1662. In analyzing the contents of the 1662 Gómez Robledo inventory, Dr. Baxter described what he thought was the Yunque property owned by elder Gómez,

about a league above the pueblo of San Juan described as 'unpopulated (sin poblar).' The same estancia is listed again in the inventory of property belonging to Gómez Robledo, who had inherited it from his father. Two months later, Fray Alonso de Posada, comisario of the Inquisition in New Mexico, certified the sale of some of Gómez Robledo's assets to pay the costs of sending him to Mexico City for trial. At that time, the grant at San Juan, which was sequestered but not sold, was described as 'iriaso (uncultivated). . . . There is no documentation of subsequent Spanish occupation in the San Gabriel/Yunque region until after the Pueblo Revolt."⁷ [Exhibit 4]

Dr. Baxter based his analysis on a misinterpretation of the contents of the inventory. The "unpopulated" and "uncultivated" property identified by Dr. Baxter as located at Yunque was, in reality, located some 150 miles to the south, in the Río Abajo region of New Mexico, in the vicinity of Socorro. As discussed above, the May 4, 1662 inventory referenced two documents pertaining to the *estancia* owned by Gómez and Gómez Robledo at Yunque. But the inventory referenced a third and fourth tract as well:

⁶Archivo General de la Nación (Mexico) (hereafter cited as AGN), Ramo Concurso de Peñalosa, Vol. 2, f. 246 [repeated folio number], R&V (microfilm copy examined at the New Mexico Records Center and Archives (hereafter cited as NMRCA)).

⁷Letter, John O. Baxter to Peter T. White, Santa Fe, May 18, 1994, pp. 1-2.

Two titles, one is the grant of the Estancia de las Barrancas, and the other of the Pueblo of San Juan, which is located one league above, and is unpopulated.⁸

The Act of Embargo, which took place at the Estancia de San Nicolas de las Barrancas two weeks later, on May 18, identified the "site of San Juan" as "contiguous to it".⁹ In July, the site of San Juan associated with San Nicolas de las Barrancas was described as "uncultivated".¹⁰ [Exhibit 3]

The sequence of documents outlined above established the close geographical proximity of the *estancia* of San Nicolas de las Barrancas to a "pueblo" or "sitio" of San Juan, which appear to have been unpopulated and uncultivated as of 1662. But rather than representing the San Juan Pueblo located at the confluence of the Río Grande and Río Chama, the San Juan referred to here was located considerably to the south.

The journals of Diego de Vargas show that Gómez Robledo's estancia at San Nicolas de las Barrancas was, indeed, located in Río Abajo. On September 2, 1692, in his march up the Río

⁸AGN, Ramo Concurso de Peñalosa, T. 2, f. 247R, "Dos títulos uno es la merced de la estancia de las barrancas y otro del Pueblo de San Juan que es una legua mas arriba y esta sin poblar."

⁹AGN, Ramo Concurso de Peñalosa, T. 2, f. 250R, "el sitio de San Juan que está ynmediato a este".

Grande, Vargas arrived at Socorro. The next day, the expedition reached the Pueblo of Alamillo, and on September 4, the uninhabited Pueblo of Sevilleta. The description of the next day's journey is as follows:

Today, Friday, the fifth of the present month of September, I, said governor and captain general, arrived at this place named Las Barrancas. I stopped with the camp near the abandoned hacienda which is said to have belonged formerly to Francisco Gómez. We traveled a little more than three leagues.

The next day, the expedition arrived at the hacienda of Thomé Domínguez de Mendoza, and the following day, Valencia.¹¹

[Exhibit 5]

Fray Angelico Chávez also placed Las Barrancas at the downriver site, referring to "the sacks of piñon kept at the Gómez estancia of Las Barrancas in the Río Abajo."¹² [Exhibit 6]

The 1984 archaeological investigations of Michael Marshall and Henry Walt into pre-Pueblo Revolt settlements in the Río Abajo area locate Las Barrancas in this area, as well. They

¹⁰ AGN, Ramo Concurso de Peñalosa, T. 2, f. 284V, ". . . y de la estancia de San Juan de las Barrancas ganados que en ella estan mayor y se guarda y de [illegible] sitio de San Juan yriaso . . ."

¹¹ J. Manuel Espinosa, *First Expedition of Vargas into New Mexico, 1692* (Albuquerque: University of New Mexico Press, 1940), pp. 65-66.

¹² Fray Angelico Chávez, *Origins of New Mexico Families* (Santa Fe: Historical Society of New Mexico, 1954), p. 37.

discuss the site in the context of the estancias in the Piro Province:

Las Barrancas appears on the Peñalosa map of 1680 and the Coronelli map of 1688 on the east bank of the Río Grande south of Nuestra Señora de Socorro and north of San Antonio de Senecu. This strongly suggests the barranca country of the east bank in the central Río Abajo study area. Indeed, the Las Barrancas on these maps, which has a dotted symbol similar to that for a settlement, could conceivably be the name of a Piro pueblo or a hacienda in the area.

References to an Estancia de Barrancas in 1661, . . . in 1681 by Otermin . . . and by Diego de Vargas in 1692 are to the residence of Francisco Gómez. This was well to the north of Sevilleta, 10 leagues to the south of Isleta Pueblo.¹³ [Exhibit 7]

Once it is understood that the "San Juan" associated with San Nicolas de las Barrancas was located in Río Abajo, it becomes clear that the "grant of the *estancia* of Yunque" owned by Francisco Gómez, the elder, and the "grant of the *estancia* at the Pueblo of San Juan de las Teguas", owned by Francisco Gómez Robledo, were one and the same, and were separate and distinct from those located much farther south. It also becomes clear that, while the southern "San Juan/Las Barrancas" site was unpopulated and uncultivated in 1662, no such designation was applied to the northern "San Juan/Yunque" site. Absent any such qualification, it is reasonable to conclude that the latter

estancia at Yunque owned by Francisco Gómez and later by his son, Francisco Gómez Robledo, was, indeed, occupied in the mid-seventeenth century.

Evidence of the continued viability of the settlement at Yunque in the mid-to-late seventeenth century is also demonstrated in a description of the area found in a petition for a grant of lands by a group of residents of Santa Cruz de la Cañada after the reconquest of New Mexico by Diego de Vargas. In their request to the governor, dated March 29, 1712, Maestre del Campo Roque Madrid and eleven other settlers asked for lands "at the place that used to be known as the Villa de Yunque for the purpose of improving for ourselves the standing structures" that existed at the site.¹⁴ [Exhibit 8]

On the basis of the documentation outlined above, it is clear that the area on the north bank of the Río Chama, located just above its confluence with the Río Grande, that is currently served by the Acequia de Chamita, was first irrigated by the

¹³Michael Marshall and Henry Walt, *Río Abajo: Prehistory and History of a Río Grande Province* (Santa Fe: Historic Preservation Division, 1984), p. 257.

¹⁴NMRCA, Spanish Archives of New Mexico (hereafter cited as SANM), Series I, No. 1020, "Juan de Uribarri, Bartholomé Lovato, Mathías Madrid, and others, petition for lands near Puesto de Chama" (1710-1712), Petition by Maestro del Campo Roque Madrid, et al., Santa Fe, March 19, 1712, Reel 5, frame 1115, ". . . un sitio que llamaban antiguamente la Villa de Yunque para mejorarnos de fábricas fuertes . . ."

Oñate colony in 1600, and continued to be occupied until the Pueblo Revolt of 1680.

Settlement and Irrigation in the Area Served by the Acequias de Salazar and Hernández, 1600-1680:

As stated above, very little documentation has survived to shed light on the history of the area in question from the initial colonization by Oñate in 1598 until the Pueblo Revolt of 1680. Fortunately, records from the first couple of decades of the post-Reconquest period help to reconstruct seventeenth-century settlement patterns in the area located on the south bank of the Río Chama at its confluence with the Río Grande.

In October of 1692, during the first phase of the Reconquest of New Mexico, Diego de Vargas visited the Pueblo of San Juan. There he found three Spanish women who had been taken captive when the Pueblo Revolt broke out twelve years earlier.¹⁵

Two and a half years later, Governor Vargas ordered a reconnaissance of the Santa Cruz region, with the intention of repopulating the area with Spanish settlers on favorable

¹⁵AGN, Ramo de Historia, Tomo 37, exp. 6, "Armed Reconnaissance and Ritual Reposession by Diego de Vargas of Santa Fe and Twelve Pueblos of the Tewa, Tano, and Taos Indians, 9 August - 16 October 1692," translated in John L. Kesell and Rick Hendricks (eds.), *By Force of*

farmland. He entrusted this task to his Lieutenant Governor, Maestre del Campo Luis de Granillo. Granillo had served as alcalde mayor of Santa Cruz prior to the Revolt, and thus had familiarity with settlement patterns in the region prior to 1680.¹⁶ To assist him in this task, Granillo selected Sergeant Juan Ruiz de Cáceres, who had been raised in the area prior to the Pueblo Revolt, and also knew well the area and its former inhabitants.¹⁷ The extent of the territory to be reconnoitered by Granillo was carefully spelled out by Vargas, and included the areas served by the Acequia de Salazar and Acequia de San José (currently Acequia de Hernández):

And the aforesaid reconnaissance being conducted by me, the aforesaid Governor and Captain-General, I have seen to it that the settlement and population be conducted of the same area entirely by Spanish who abandoned and left during the general uprising that took place in August of [16]80 in this kingdom, in the places and haciendas that extend from this Villa of Santa Fe, toward the Pueblo of Tesuque, and **those that extend beyond the Pueblos of San Ildefonso and Santa Clara, on the other side of the Río del Norte**, and on this [side], from those that extend beyond the Mesa de San Ildefonso toward the road to San Juan de los Caballeros, and those that extend toward the aforesaid pueblos occupying the aforesaid haciendas, San Lázaro and San Cristóbal, and those that extend from here toward the

Arms: The Journals of Don Diego de Vargas, 1691-1693 (Albuquerque: University of New Mexico Press, 1992), p. 444.

¹⁶Myra Ellen Jenkins, "Settlement of the Santa Cruz Cañada," unpublished report submitted to the New Mexico State Engineer Office, March 1984, p. 7.

¹⁷NMRCA, SANM I, No. 882, "Proceedings in the settlement of the Villa of Santa Cruz" (1695), f. 13R.

Camino Real that goes to Picuris, the cañada named for the hacienda of Moraga, and the estancias of Captains Luis Martín and Juan Luis beyond, and in the site and tract known as Chimayó (emphasis added) . . .¹⁸

With his instructions in hand, Granillo departed from Santa Fe on March 20, 1695, passing through the Pueblo of Tesuque before arriving at the Pueblo of San Lázaro, just east of Santa Cruz de la Cañada, to spend the night. The next morning, Granillo traveled up the Río Santa Cruz two and a half leagues to Chimayó. After inspecting the site at Chimayó, he turned around and marched back down the Cañada, passing by the Pueblo of San Lázaro on his left. Granillo continued down the Río Santa Cruz, crossed the Río Grande to the west bank, turned right, and began describing the various haciendas that had occupied the west bank prior to the Pueblo Revolt, the nature and extent of the farmlands, and how many families each hacienda

¹⁸NMRCA, SANM I, No. 882, f. 2, "y siendo dho. reconocimiento echo como dho. es pr. mi dho. Govr. y capn. Genl. he hallado que el asiento y poblazón se deve hazer de la dha. vezindad y del Ramo dho. que está de próximo para entrar entierra meramente. de los españoles que desampararon y dejaron desde la sublevazn. Genl. del mes de Agosto del año de ochenta de este dho. Rno. en los parajes y aziendas que salen desde esta dha. Villa de Sta. fee para el Pueblo de tezuque y las que corren desde los Pueblos de Sn. Yldephonso y sta. Clara de la otra vanda del Río del norte y de esta desde las que corren y se hallan desde delante de la m[e]sa de Sn. Yldephonso para el camin[o] que ba a dho. Puo. de Sn. Juan de los caballeros y las que corren para los pueblos poblados en dhas. haciendas y son de Sn. Lázaro y sn. Xptóbal y las que sa[-] de este y corren pr. el camino Rl. que ba a picuris cañada q. llama de la hazda. de Moraga y estanzias de los capitanes Luis Martín y Juan Luis delante y en el paraje y pago que llama de simayó."

could support. The text of the reconnaissance following Granillo's departure from Chimayó is as follows:

[marginal note:]

The aforesaid Lieutenant General leaves by the Cañada toward the Pueblos of San Juan, and crosses to the other side of the Río del Norte to sleep at Santa Clara:

And immediately afterward, on the same day, month and year, the aforesaid Lieutenant General took the route and road in compliance with the tenor of the cited order and command, leaving on the reconnaissance of the haciendas and ranches of the cañada that they say had been inhabited by the vecinos that had been there prior to the general uprising of this kingdom. And at a distance of one-half league, and bordering the aforesaid hacienda of Captain Juan Luis, who has possession of the aforesaid grant of the aforesaid Indians, I recognized this, and found the estancia that had belonged to the Martinez, whose ruins consist of the standing walls, and there five vecinos and their families lived with their ranches, as there were sufficient lands and pasture towards the north. And having traveled in the aforesaid direction for three quarters of a league, I found on the left side of the road the aforesaid Pueblo of San Lazaro. And crossing the Río del Norte, on my right, I found and saw the hacienda that had belonged to Miguel Lujan, whose houses were standing, and there the aforesaid lived alone with his family, as there were irrigated farmlands sufficient only for one family, and a small quantity of pasturelands for the livestock of all types that he possessed. And bordering this hacienda was another tract and farm, tilled by Marcos de Herrera, whose family owned another hacienda farther downriver, and the said farm comprised almost the same as the previous one. And continuing from here, there was another tract and farm that had belonged to Nicolas de la Cruz, whose house was standing firmly, there being lands sufficient only to support his family, and the pasturelands of the same quality. And continuing from here the farm that had belonged to Melchor de Archuleta, whose house was found only in ruins, there being almost the same farmlands and pasturelands for one family. And continuing on, at the aforesaid garden plot and meadow, another hacienda that

belonged to Juan Griego, which consists of a larger tract of land than any of the aforesaid, as it had a lot of room, and thus two families could live there, dividing the aforesaid farmland and pastureland between both of them. And in the same manner, continuing from there, another hacienda that belonged to Sebastian Gonzales, which had been owned by Alonso del Río, and in this two others had an interest in the tract, and the aforesaid site was capable of supporting three families, the lands being of higher quality. And continuing on, the hacienda that belonged to Francisco Xavier, with its houses in ruins, and a little tower standing, and although he lived there alone, the place had the capacity of sustaining two families abundantly. And from there, continuing on to that of Pedro de la Cruz, whose house was found to consist of one room, having farmlands for only one vecino and his family.¹⁹

¹⁹NMRCA, SANM I, No. 882, ff. 9V-11V:

[marginal note:]

Sale dicho Teniente General por la cañada para hacia los Pueblos de San Juan y pasa a la otra banda del Rio del Norte a dormir a Santa Clara=

Y luego yncontinenti en dicho dia mes y año yo dicho lugar Teniente General tome la buecita y derezera por cumplir con el tenor del mandamiento y orden referido saliendo al reconocimiento de las haciendas que se hallavan pobladas y ranchos que dezian de la cañada de los vezinos que se hallavan antes de la sublevacion General de este Reino y a distancia de media Legua y al lindero de dicha hacienda del Capitan Juan Luis que tiene el puesto suso dicho de la dicha Merced de dichos indios esta Reconozi y halle la estancia que era de los Martinez cuyas Ruinas estan de las paderes Vivas y en ella vivian Poblados con sus ranchos cinco vecinos con sus familias por tener tierras bastantes y pastos hacia el norte y haviendo andado por dho. rumbo como tres quartos de Legua halle la derezera sobre mano izquierda el suso dicho Pueblo de San Lazaro y pasando el Rio del Norte sobre mano derecha halle y vide la hacienda que fue de Miguel Lujan cuyas de dichas casas se mantienen y en ella solo vivió el dicho con su familia por tener tierras solo de labor y riego bastantes para una familia y los pastos en la cortedad de ganado que tubiere de todo genero y delinda asi mismo con esta hacienda otra suerte y labor de tierras que sembrava Marcos de Herrera cuya familia tenía en otra hacienda mas abajo y dicha labor tendra casi la misma tierra que la antezedente y dicha y a esta se sigue otra suerte y labor de tierras que fue de Nicolas de la Cruz cuya casa se mantiene en pie de dicha su vivienda siendo solo las tierras las nezesarias para mantener la dicha su familia y los pastos en dicha calidad y a esta se sigue la labor que fue de Melchor de Archuleta cuya ruina de su

Once he reached the northernmost settlement along the west bank, Granillo turned around and headed back south, along the escarpment overlooking the Río Grande Valley. When he reached the arroyo near where he started, probably the Arroyo Guachupangue, he continued with his description of the downriver haciendas before stopping for the night at the Pueblo of Santa Clara:

And having completed the reconnaissance of the aforesaid haciendas, I the aforesaid Lieutenant Governor crossed to the other part of the arroyo that could be found in the middle of them and descends down the aforesaid canada and finding this Río del Norte, on the right-hand side the following haciendas were reconnoitered: The first to be immediately encountered at the aforesaid arroyo was the hacienda that belonged to Bartolomé Montoya, and there was recognized the ruins of the house in which he lived, and also there were farmlands enough for one vecino with his family, and in the same manner, there was found adjoining another hacienda that belonged to Diego López, and there was standing a tower next to the aforesaid house, the lands being sufficient only for one vecino with his family. And continuing on, another hacienda that belonged to Marcos de Herrera, and the aforesaid hacienda has lands only for one vecino and his family, whose house, because it is adjacent to this aforesaid arroyo or little river, was washed out in

casa solo ay y se rrudnose[?] siendo casi las mismas tierras para una familia y en la dicha forma los dichos pastos = y se siguen en dicha tabla y vega otra hacienda que fue de Juan Griego que esta es mayor suerte de tierra que ninguna de las dichas por tener mucho sitio y así podran vivir en el dos familias dividiendoles la dicha tierra de labor y los pastos por ambos = y asi mismo se sigue otra hacienda que fue de Sevastian Gonzales que poseya el Capitan Alonso del Rrio y en esta tenían parte otros dos de suerte que caven y se pueden poblar en dicho sitio tres familias y ser su tierras de mejor calidad = y se sigue la hacienda que fue de Francisco Xavier arruynada las casas y en pie un torreoncillo y anque el la vivió solo tiene el sitio tierras para dos familias muy sobradamente = y a esta se sigue la de Pedro de la Cruz de cuya casa se halla en ser un aposento y tiene tierras solo para un vezino con su familia . . ."

a heavy runoff. And continuing on, another tract of farmland that belonged to the convent of the Pueblo of Santa Clara. And continuing on, the hacienda that belonged to the Maestre del Campo Francisco Gómez, of which only the foundations of the house are visible, and which could support one vecino and his family. And continuing on, the hacienda that belonged to Ambrosio Saez, the houses of which are occupied by a number of rebellious Teguas of the Pueblo of Tesuque, as they were in the past year of 1694, sowing the aforesaid lands, and for the aforesaid reason there are found good lodgings, and this aforesaid hacienda is capable of supporting two other vecinos with their families. And in the same manner there is found in the aforesaid meadow in the midst of the hacienda where Agustín Romero lived during the time of the planting, because he maintained his farm at the aforesaid site, where one vecino with his family could live very well. And in the same manner, descending to the bank of the Río del Norte and Mesa of San Ildefonso, whose ruins of the aforesaid house were visible, and the lands are sufficient for only one vecino with his family. And the aforesaid haciendas are those which are found as described above from the aforesaid mouth of the canada, according to what was indicated, with their owners who lived there, and who settled there. And I, the aforesaid Lieutenant Governor, left with the aforesaid Sergeant Juan Ruiz, who assisted me on the aforesaid reconnaissance, and who is familiar with the aforesaid places, as he had always lived adjacent to them, and was raised there. And having made the aforesaid account certain and secure, and in order that it may so appear, I approved of it as part of the proceedings, and signed. Passing to sleep at the Pueblo of Santa Clara, dated as above.²⁰ [Exhibit 9]

²⁰NMRCA, SANM I, No. 882, ff. 11V-13R, " . . . y haviendose acavada de dar vista yo dicho Teniente General a las dhas. haciendas expresadas pase a la otra parte del arroyo que se halla en el medio de ellas y baja de dha. cañada y se halla este río del norte sobre mano derecha y reconoció las haciendas siguientes = Primeramente se halla ymediato a dicho arroyo la hacienda q. fue de Bare. Montoya y solo se reconoce Las rruynas de la casa en q. vivió y solo tamvien tiene tierras para un vezo. con su familia y así mismo se halla adjunta otra Hazda. q. fue de Diego López y se mantiene un torre en q. tenía junto a dha. casa siendo sus tierras tan solamente pa. un vezino con s[u] familia y se sigue otra hacienda q. fue de Marcos de Herrera y dha. hacienda solo tiene tierras para un vezino con su familia cuya cassa por estar ymediatta a este

Thus did Luis de Granillo on March 21, 1695 describe eight pre-Revolt agricultural haciendas of varying sizes on the west bank of the Río Grande, extending northward from its confluence with the Río Santa Cruz, through the areas served by the Acequias de Salazar and Hernández, before turning around, heading south, and spending the night at the Pueblo of Santa Clara.

Evidence of pre-Revolt settlement also appears in early eighteenth-century land records, as well. About fifteen years after the Granillo reconnaissance, a group of residents of Santa Cruz, among them some of those who two years later would unsuccessfully seek lands at Yunque (see p. 9, above),

dho. arroyo o rriachuelo se la llevó en una creciente grande q. trujo= y se sigue otra suerte de tierras de labor q. tenía y pertenezía al convto. del Puo. de sta. Clara= y a esta se sigue la Hazda. q. fue del mre. de campo franco. Gómez q. solo la señal de los zimytos. de la cassa q. tubo se rreconozan y solo puede sobradamente. vivir en ella un vezo. con su familia= y se sigue la Hazda. q. fue de Ambrosio Sáez en cuya parte de sus cassas se hallan abersse Rancheado como lo estubieron el año pasado de mill seizos. y noventa y quattro parte de los yndios theguas Reveldes del Pueblo de Tezuqu[e] por gozar de sembrar las dhas. tierras y por dha. rrazón se hallan Viviendas buenas y en esta dha. hacienda se pueden Poblar dos otros Vezos. a su parecer con sus familias= y así mismo se halla en dha. vega en el medio la hacienda donde estubo poblado Augn. Romero en el tiempo de las ementesas [??] por tener su labor en dho. sitio donde puede vivir muy bien un vezo.; con su familia y así mismo bajand[o] a la frente del rrío del norte y messa de sn. Yldephonso cuya rruina de dha. cassa se rreconoce y solo su tierra es les [???] suficiente para un vezo. con su familia y son dhas. hazdas. las q. se hallan como dho. es desde dha. boca de la cañada segun se rrefieren con sus dueños q. en ella viveron y estubieren Pobladas y me rretire yo dho. The. Generl. con dho. Sargto Juo. Rruíz q. asiste juntamente conmigo al dho. Reconozimyto. y conoze los dhos. puestos por haver vivido siempre ynmediato a ellos y haberse criado y ser hecha la dha. rrelazon. zierta y segura y para q. conste lo passe por diligenzia q. firme pasando a dormir al Puo. de sta. Clara fho. ut supra=

petitioned the royal authorities for a large grant of agricultural lands on the west bank of the Río Grande, at its confluence with the Río Chama. The nature of their intentions, as well as the general location was made clear in the text of their request:

In order that we might secure a better location for our farmlands and to facilitate access to firewood, and other factors of convenience, we have determined to move to a site and establish ourselves **on the other side of the Río del Norte [Río Grande], the site bordering some stone corrals**, running from there to the boundaries of the Pueblo de Chama on the north, and [bounded on] the east with the aforesaid river, and on the west and south with the hills and the aforesaid corrals . . .(emphasis added).²¹ [Exhibit 8]

The stone corrals cited in this petition as having been in place as of 1710, strongly indicate that the lands on the west bank of the Río Grande and south bank of the Río Chama had been occupied prior to the Pueblo Revolt of 1680.

Another land grant document from this period offers even more direct evidence linking pre-Revolt and post-Revolt

[signed] Luis de Granillo."

²¹NMRCA, SANM I, No. 1020, "Juan de Uribarrí, Bartholomé Lovato, Mathias Madrid, and others, petition for lands near Puesto de Chama" (1710-1712), Petition by Sargento Mayor Juan de Uribarrí, et al., Santa Fe, February 22, 1710, Reel 5, fr. 1120, ". . . desimos que para mejorarnos de sitio asi para nras. sementeras como para fzilitar el acarreto de la leña y otras buenas conveniencias determinamos pasarnos a poblar un sitio que está a la otra banda de el Río del Norte, el qual sitio esta frontero de unos corrales de piedra y corre desde ellos asta los linderos de el Pueblo de Chama que es por la parte del norte y por la de el oriente con el dho. Río y pr. la de el poniente y sur con las lomas y dhos. corrales . . ."

settlement at the area in question. A 1714 petition for lands by Antonio de Salazar, also from Santa Cruz, linked these agricultural tracts to his grandfather, who had farmed the site prior to 1680:

There is a site on the other side of the Río del Norte that formerly was owned by my grandfather, Alonso Martín Barba, and at present is uncultivated and uninhabited, and on the basis of my family right to which I refer, I register this land so that I may enjoy it, and give it equally to my siblings, the boundaries [of the land] being on the north, some stone corrals that serve as boundary markers; on the west, the recognized boundaries of Alferez Salvador de Santiesteban; on the south, the recognized boundaries of the lands of Captain Joseph Naranjo; and on the east by the Río del Norte . . .²² [Exhibit 10]

It is interesting to note that the "stone corrals" cited in the latter two documents served as the southern and northern boundaries of the two tracts, respectively. It is reasonable to conclude that these corrals constituted the site currently known as "Corral de Piedra", located in the area served by the Acequia de Salazar.

²²NMRCA, Office of the Surveyor General, Report No. 132, "Antonio de Salazar Grant", Reel 25, fr. 593, Petition by Antonio de Salazar, Santa Fe, August 25, 1714, "... está un sitio de tierras en la otra vanda del Río del Norte que antiguamente era y posseya mi abuelo el Capitn. Alonso Martín Barba, y aora esta yermo, y despoblado, y representando derecho por mi parte en el parentesco que refiero, lo registro para gosarlo yo y darles parte a mis hermanos ygualmte. cuyos linderos son del la parte del Norte unos corrales de piedra q. pueden servir de mojoneras, por la del poniente donde se reconocieren los linderos del Alferez Salvador de Santiesteban, por la del sur los q. se reconocieren de las tierras del Capitn. Joseph Naranjo, y por la del oriente con el Río del Norte . . ." Fray Angelico Chávez expressed the view that Alonso Martín Barba was more likely the *great*-grandfather of Antonio de Salazar (*Origins of New Mexico Families*, p. 279, footnote 6).

The fact that on three separate instances from 1695 to 1714, reference was made to the existence of standing walls of corrals, eight haciendas, and even to the farming activities of ancestors, demonstrates clearly that Spanish settlers were engaging in agricultural activity in the area served by the Acequias de Salazar and Hernández prior to the Pueblo Revolt of 1680.

Conclusion:

On the basis of the evidence presented above, it is clear that irrigation of the lands served by the acequias in question began significantly prior to 1714, the priority date recommended by the court's historian. Analysis of primary archival documentation indicates that irrigation first was initiated at Chamita as early as 1600, the date that Oñate's colony constructed the first ditch. Over the course of the next several decades, it appears that lands at San Gabriel de Yunque had been continuously occupied and used for farming. Similarly, documentary evidence shows that the lands served by the Acequias de Salazar and Hernández were also farmed prior to the Pueblo Revolt of 1680.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

10892

STATE OF NEW MEXICO, *ex rel.*
State Engineer

Plaintiff,

69cv07941-MV-LFG

vs.

ROMAN ARAGON, *et al.*,

RIO CHAMA STREAM SYSTEM

Defendants.

Section 1, Chama Mainstream

Acequia de Chamita
Subfile 267, Tract 22.17

**STATE OF NEW MEXICO'S REQUESTED FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

REQUESTED FINDINGS OF FACT

1. With authorization from the Spanish Crown, in 1598 Don Juan de Oñate led a large expedition out of San Bartolomé in present Chihuahua to establish a permanent settlement in New Mexico.
2. The *Ytinerario de las minas de Caxco . . . hasta el Nuevo México* ("Ytinerario") is a contemporaneous account of the Oñate expedition written by a Franciscan Friar who was a member of the expedition.
3. In New Mexico the Oñate expedition split into two groups. The advance party with Oñate arrived at the pueblo of San Juan on July 11, 1598. The carts and wagons in the expedition proceeded by a longer route via San Marcos and joined the advance party at the pueblo of San Juan on August 18, 1598.
4. The *Ytinerario* states that on July 11, 1598 the advance party with Oñate traveled two leagues and arrived at a pueblo that the Spanish called "San Juan."
5. The *Ytinerario* states that the carts and wagons (which had taken a longer route north via San Marcos) arrived at the pueblo of "San Juan Bautista" on August 18, 1598.

6. The references in the *Ytinerario* to “San Juan” and “San Juan Bautista” refer to the pueblo of San Juan located on the east side of the Rio Grande.
7. Between July 13 and August 10, 1598, Oñate explored Northern New Mexico and traveled to a number of Indian pueblos including Picurís, Taos, San Ildefonso, San Marcos, Galisteo, Pecos and Jemez.
8. The *Ytinerario* states that on 10 August Oñate returned to “San Juan.”
9. The *Ytinerario* states that on 11 August, with the assistance of 1,500 Pueblo Indians, the settlers began work on an acequia for the city (“ciudad”) of our Father San Francisco.
10. The entry in the *Ytinerario* on August 11, 1598 describing the city of San Francisco is the first reference in the historical record to this site, and the only such reference in the *Ytinerario*.
11. Use of the term “ciudad” indicates a major urban establishment rather than a lesser population center such as a “villa” or “plaza”.
12. The city of San Francisco described in the *Ytinerario* was intended by Oñate to be the capital city of the new Spanish colony in New Mexico.
13. The *Ytinerario* states that the colonists began the construction of a church on August 23, 1598, which was completed on 7 September. The dedication of the church of “San Juan Bautista” took place the following day.
14. The *Ytinerario* ends in January 1599 without explanation.
15. The *Act of Obedience and Vassalage by the Indians of San Juan Bautista* (“*Act of Obedience*”) is a written account of the loyalty and submission sworn by the Indians at “San Juan Bautista.” The document was prepared by Juan Pérez de Donís, a royal notary and member of Oñate’s staff.
16. The *Act of Obedience* describes an assignment of the Franciscan Friars to the various Indian pueblos on September 9, 1598. Fr. Cristóbal de Salazar was assigned the province of the Tewas including the pueblos of San Ildefonso, Santa Clara, “this pueblo of San Juan Bautista,” “San Gabriel” and others. In addition, Fr. Salazar was assigned “the city of San Francisco de los Espaňoles, which is being built now.” (“se que edifican”).
17. The *Act of Obedience* specifically distinguished between the pueblo of San Juan, the pueblo of San Gabriel, and the new Spanish city of San Francisco which was said to be under construction. What is described as the pueblo of San Gabriel was the pueblo of Yunque directly west and across the Rio Grande from the pueblo of San Juan.

18. The location of the intended town site for the capital city of San Francisco is uncertain, but it was most likely to be situated near the pueblo of San Juan on the east side of the Rio Grande where it would not intrude on the fields and lands of the Pueblo Indians.
19. The acequia described in the *Ytinerario* to serve the city of San Francisco was located on the east side of the Rio Grande near the pueblo of San Juan.
20. Soon after the arrival of the wagons and carts on August 18, 1598, the settlers began to complain bitterly about the conditions of the settlement. Most of the food supply had to be extorted from their Pueblo neighbors and there was fear of starvation. According to testimony given in July 1601, the dissatisfied settlers refused to take part in the construction of the city of San Francisco.
21. In the spring of 1599 Oñate send a delegation led by Gaspar de Villagrá to the viceroy in New Spain to report on his discoveries and to request reinforcements. The delegation took with them a series of documents prepared by Oñate and his staff in January and February of 1599. All of these documents state that they were prepared "at the pueblo of San Juan Bautista." The last such document was dated February 28, 1599. In addition to the reports and other documents that were taken to New Spain by the delegation, Oñate sent several letters to the viceroy and to the King that were dated in March and April of 1599. These letters either do not state where they were prepared, or state only that they were prepared in New Mexico. A final letter from Oñate to Villagrá was date lined "At the capital, May 30, 1599." None of these documents or letters mention the pueblo of San Gabriel. Villagrá never returned to New Mexico. After he returned to Spain, he published *Historia de la Nueva México* in 1610. Villagrá's History of New Mexico contains several references to San Juan, the pueblo of San Juan, or San Juan the capital, but it does not mention the pueblo of San Gabriel.
22. When the relief party that been requested by Oñate from New Spain arrived at the colony on December 24, 1600 (Christmas Eve), the Spanish were occupying the pueblo of San Gabriel across the Rio Grande and directly west of the pueblo of San Juan.
23. In March 1601, a second small delegation left the colony for New Spain. A letter to the viceroy from Captain Velasco sent with that delegation, and probably smuggled out, was written at San Gabriel on March 22, 1601. Later in the fall of 1601 when Oñate returned from explorations as far away a present day Kansas, he found that most of the colonists and friars had deserted and left for New Spain. Oñate sent Vincente de Zaldívar to force the colonists to return, but Valdízar was unable to overtake them in time. Zaldívar continued to Mexico City and carried with him three sets of documents that had been prepared earlier in New Mexico, documents that were presented to the audiencia in April 1602. The third set of documents (testimony by Zubía, Bañuelos and Fray Francisco de San Miguel) state that they were prepared "at the pueblo of San Gabriel" in July 1600.
24. The documents prepared at the pueblo of San Gabriel in July 1600 are the earliest known

historical documents that indicate the occupation of San Gabriel by the Spanish colonists. No known documents were said to be signed or prepared at the “pueblo of San Juan,” “San Juan” or “San Juan Bautista” after February 1599.

25. As of the end of February 1599, the new colony and Oñate’s headquarters were located at the pueblo of San Juan (Okey) on the east side of the Rio Grande. Sometime between the spring of 1599 and July of 1600, the colony was relocated across the Rio Grande to the pueblo of San Gabriel (Yunque).
26. Soon after the relocation of the colony and the occupation of the pueblo of San Gabriel, the settlers constructed an acequia with waters taken from the Rio Chama. San Gabriel was located in the area now known as Chamita. Although the exact date of the construction of this acequia is not known, the historical record supports a construction date of 1600 based on the letters carried to Mexico City by Vincente de Zaldívar in 1601 and the approximate time of the move to San Gabriel from San Juan Bautista.
27. The acequia constructed by the settlers at San Gabriel is now known as the Acequia de Chamita. The Acequia de Chamita is the source of irrigation water for Tract 22.17 (Subfile 267) owned by Defendants David Ortiz and Cecilia O. Ortiz.
28. The known historical record for the Spanish settlement at San Gabriel does not support a claim of irrigation on Tract 22.17 (Subfile 267) owned by Defendants David Ortiz and Cecilia O. Ortiz earlier than 1600.

REQUESTED CONCLUSIONS OF LAW

1. The priority date of the water rights appurtenant to Tract 22.17 (Subfile 267) owned by Defendants David Ortiz and Cecilia O. Ortiz is 1600.

Respectfully submitted,

/s/ Ed Newville
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9546

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO on the)
relation of State Engineer,)
Plaintiff,)
-v-)
ROMAN ARAGON et al.,)
Defendants.)
69cv07941-BB
RIO CHAMA STREAM SYSTEM
Section 1 - Mainstream

SPECIAL MASTER'S REPORT ON PRIORITIES FOR THREE ACEQUIAS

To: The Honorable Bruce B. Black From: Vickie L. Gabin
District Judge Special Master

This Report recommends that the Court find no abandonment of water rights by the original settlers in the areas of the current day Acequias de Chamita, Hernandez and Los Salazares, and that the first use of water was 1600.

THIS MATTER is before the Special Master pursuant to Fed. R. Civ. P. 53, and reports findings of fact and conclusions of law following evidentiary hearings held August 14, 15, 16 and 19, 1996. These hearings were the culmination of the State's efforts to complete the adjudication of water rights priorities in the Mainstream Section of the Rio Chama Stream System. *See, e.g.*, Amended Order on the Adjudication of Water Right Priorities (July 8, 1994). Priority dates for three mainstream acequias - the Acequias de Chamita, Hernandez, and Los Salazares - were at issue. The parties were the State of New Mexico, *ex rel.* State Engineer ("State"), the Acequias mentioned above and several individual water rights claimants on those acequias (collectively, "the Acequias").

The pleadings and exhibits I reviewed are listed following the body of this Report in Appendices

The following stipulated facts were agreed upon by Dr. Baxter and Dr. Hordes, and adopted by the Court (Order, November 17, 1995, Doc. No. 4380).

1. In 1598 Juan de Oñate led a large expedition out of San Bartolomé in present Chihuahua to establish a permanent settlement in New Mexico. In this endeavor he was accompanied by 10 Franciscan friars and 129 citizen-soldiers and their families.
2. The Oñate expedition arrived at present San Juan Pueblo¹ on July 11, 1598.
3. With the assistance of 1,500 Pueblo Indians, Oñate initiated a project to build an acequia on the ~~east~~ bank of the Río Grande.
- X 4. In 1600 Spanish settlers moved to a new settlement across the Río Grande to a location directly west of the Pueblo of San Juan, north of the Río Chama, at the partially abandoned Pueblo of Yuque-Yunque, which the Spanish authorities named "San Gabriel".
5. The Spanish settlers promptly established an irrigation system at San Gabriel, constructing an acequia taken from the waters of the Río Chama. This acequia irrigated wheat, barley, corn and other garden crops. San Gabriel was located in the area now known as Chamita.
6. About 1608, some Spanish settlers left San Gabriel and relocated at the present site of Santa Fe.
7. The Pueblo Revolt of 1680 resulted in the destruction of virtually all of the locally-generated records in New Mexico from the founding of Santa Fe to 1680. It is thus impossible to determine how many Spanish settlers remained at San Gabriel after 1608, or the nature and extent of Spanish settlement at San Gabriel through the 17th Century based on contemporary documentation.

¹ The Pueblo of San Juan is now known as Ohkay Owingeh. This report, however, will refer to the Pueblo by its previous name to avoid confusion.

participated in exploratory expeditions with Don Juan Onate. Others re-located to Santa Fe, which became the official capital in 1610. Baxter, Tr. Vo. 1 at 44-45, 132.

6. Due to the absence of many of the colonizers while they were on expeditions, Indian raids made farming difficult and decimated the livestock. The diminished population and relatively isolated location made San Gabriel vulnerable to Indian raids. Baxter, Tr. Vol. 1 at 43, 50.

7. While the capital was being moved from San Gabriel to Santa Fe in 1608, Juan Martinez de Montoya reported that he was building a new house at San Gabriel. Baxter, Tr. Vol. 1 at 131; Hordes, Tr. Vol. III at 282-3; 385-87; Hordes Report at 4.

8. Fran Alonso de Benavides, a member of the Franciscan order in New Mexico, wrote a report on New Mexico in the 1620's. The report did not mention San Gabriel. Baxter, TR 61, 62; Plaintiff's Exh. 3.

9. In 1662, Francisco Gomez Robledo maintained an estancia at San Gabriel de Yunque which was owned before him by his father, Francisco Gomez. Hordes, Tr. II at 283-84, Def. Exh. E-3.

10. In 1712, Roque Madrid and other settlers petitioned for lands at the Villa de Yunque for the purpose of improving the existing "corrales de piedra." Def. Exh. E1 at 9.

11. In 1714 Cristobal Crespin petitioned for lands along the north bank of the Rio Chama. The petition included the statement that the existing acequia had been cleaned out in April, 1714. Def. Exh. T; Adelo, Tr. 410-413.

12. The acequia named in the Crespin petition is the present-day Chamita Ditch. There is no geomorphic or other evidence of an acequia other than the Acequia de Chamita that could have irrigated lands at San Gabriel. Lazarus, Tr. Vol. II at 240- 9.

Richard Salazar, who was raised in the Corral de Piedra area on the west side of the Rio Chama, and by Jose Fidel Trujillo, shows that both the Salazar and Trujillo families descend from Alonso Martin Barba, who, prior to 1680, held land near the confluence of the Rio Chama and Rio Grande. Levine, Tr. 461 - 62; J. Richard Salazar, Tr. 600 - 601; J. F. Trujillo, Tr. 620-621.

20. The Spanish word used to indicate the construction of a new acequia might be "abrir" (to open) or "hacer" (to make). Adelo, Tr. 412 - 413.

21. In Spanish spoken in Northern New Mexico, the word "pasando" means to cross over. Adelo, Tr. 415 - 416.

III. QUESTIONS TO BE DETERMINED

The questions to be determined are whether the State has shown by clear and convincing evidence that the 17th century colonizers abandoned the water rights initiated around 1600; and, if abandonment has been shown, whether the Acequias have shown a reasonable excuse for having done so.

IV. DISCUSSION

A. Abandonment

The law of abandonment in New Mexico requires the plaintiff to show that the owner of a right relinquished the right with the requisite intent to desert the right. Reynolds v. South Springs Co., 452 P.2d 478 (N.M. 1969). Quoting with approval from Green Valley Ditch Co. v. Franz, 129 P. 1006, 1008 (Co. 1913), the Court stated:

[I]ntent may be express or implied. It may be effected by a plain declaration of an intention to abandon it; and it may be inferred from acts or failures to act so inconsistent with an intention to retain it that the unprejudiced mind is convinced of the renunciation.

plaintiff satisfies the burden of persuasion by a clear and convincing (or similar standard) proof.

See, Addington v. Texas, 441 US 418 (1979).

The State asserts that clear and convincing evidence demonstrates that the colonists ceased irrigating for nearly 100 years. In support of this assertion, the State cites two sources: the 1620 report by Fray Benavides, which makes no mention of San Gabriel, giving rise to the inference that it was no longer a viable settlement; and the report written by Fray Juan de Torquemada between 1612 and 1615, which makes no mention of agricultural activity after 1612. Additional findings suggest that the population in the San Gabriel area fluctuated as a consequence of a variety of factors: the establishment of Santa Fe in 1608; the continuing, wide-ranging explorations by Onate and some of the colonizers; and Indian depredations. The State then concludes that documents suggesting that the colonists received lands in 1714 constitute the only “reliable and credible evidence of the first, unabandoned irrigation efforts in the area.” State’s Brief at 8.

Evaluating a case where the facts relate to irrigation and settlement patterns over 400 years old is challenging, at the very least. “Clear and convincing,” or even the lesser standard of “preponderance of the evidence” are standards which do not lend themselves to ready application in this case. One court has found that it would be “overly burdensome and unrealistic” to require “unquestionable, overwhelmingly clear evidence” of a pre-1903 water use in 1991 [emphasis supplied]. Eskelson v. Town of Perry, 819 P.2d 770, 774 (Utah 1991). It is tempting to use Eskelson for the basis of a declaration that New Mexico’s extraordinary colonial history prevents the fact finder from finding very many facts with any degree of certainty. I feel, however, constrained to work within the bounds of existing case law and the State’s chosen legal analysis of the doctrine of abandonment as applied to their evidence.

APPENDIX I: PLEADINGS

1. Order Adopting Stipulation, and Stipulation Agreed to by Dr. Stanley Hordes and Dr. John Baxter (November 17, 1995, Doc. No. 4380)
3. New Mexico's Requested Findings of Fact and Conclusions of Law on the Priority Dates of Certain Community Acequias (April 3, 1997, Doc. No. 5628)
3. State of New Mexico's Memorandum Brief in Support of its Requested Findings of Fact and Conclusions of Law on the priority Dates of Certain Community Acequias (April 3, 1997, Doc No. 5629)
4. Acequias' Requested Findings of Fact and Conclusions of Law Regarding Priority Dates (April 2, 1997, Doc. No. 5626)
5. Acequias' Brief in Support of Requested Findings of Fact and Conclusions of Law Regarding Priority Dates (April 2, 1997, Doc. No. 5627)

APPENDIX II: EXHIBITS

Note: Exhibits are included with pleadings in the physical docket located at the U.S.D.Ct. Albuquerque

Plaintiff's Exhibits

1. Worcester, Donald E., "The Navajo During the Spanish Regime in New Mexico," New Mexico Historical Review, Vol. 26, No. 2
2. Scholes, France V., "Civil Government and Society in New Mexico in the Seventeenth Century," New Mexico Historical Review, Vol. 10, No. 2
3. The Memorial of Fray Alonso de Benavides, 1630
4. Maps indicating settlements cited by Granillo
5. Spanish Archives of New Mexico I, No. 882
6. Spanish Archives of New Mexico I, No. 311
7. Spanish Archives of New Mexico I, No. 400
8. Spanish Archives of New Mexico I, No. 293
9. Excerpt from Twitchell, Ralph Emerson, The Spanish Archives of New Mexico Vol. I
10. Excerpt from Court of Private Land Claims, Case No. 194
11. Spanish Archives of New Mexico I, No. 932
12. Spanish Archives of New Mexico I, No. 828
13. Spanish Archives of New Mexico I, No. 823
14. Partial translation, Spanish Archives of New Mexico I, No. 818
15. Baxter, John O., Report: Irrigation in the Chama Valley
16. Spanish Archives of New Mexico I, No. 289
17. Spanish Archives of New Mexico, Borego-Ortega papers
18. Spanish Archives I, No. 413

T. English translation of No. S, above

U. Bloom, Lansing B., "When was Santa Fe Founded?," in New Mexico Historical Review, Vol. 9, 1929

V. Document from the Biblioteca Nacional de Mexico

W. Document from the Biblioteca National de Mexico

X. Dictionary definition of "despoblar"

Y. Dictionary definition of "despoblarse el lugar"

Z. Excerpt from Historical Documents relating to New Mexico, Nueva Vizcaya, and Approaches Thereto, to 1773, collected by Adolph F.A. Bandelet and Fanny R. Bandelet

AA. Adelo, Samuel A., Biographical Information

BB. Hordes Report, p. 14

CC. Dictionary definition of "pacer"

DD. Levine, Dr. Frances, Curriculum Vitae

EE. Levine, Dr. Frances, Report: Local Perspectives: A Case Study from the Rio Chama Water Rights Adjudication, Summer 1996

FF. Temporary Restraining Order, United States v. Manda, No. 735, Equity (May 16, 1921)

GG. Order of Dismissal, United States v. Manda, No. 735, Equity (June 6, 1932)

HH. Martinez, Elmer, "Salazar, Orients Escaroles," A Heraldic Research Report

Special Masters Report

A

APPENDIX I: PLEADINGS

1. Order Adopting Stipulation, and Stipulation Agreed to by Dr. Stanley Hordes and Dr. John Baxter (November 17, 1995, Doc. No. 4380)
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We never see where it does not have a copy

Att. 12 (Concluded at 12:00 p.m.)

795 Nov.-17

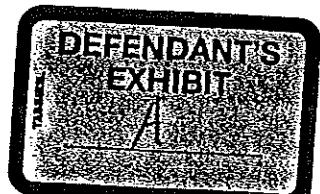
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO on the) relation of the State Engineer,) Plaintiff,) v.) RAMON ARAGON, et al.,) Defendants.) _____)) 95 NOV 17 AM 1:48 No. CIV 7941 SC RIO CHAMA ADJUDICATION SUIT Section I (Mainstream) _____
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ORDER ADOPTING STIPULATION

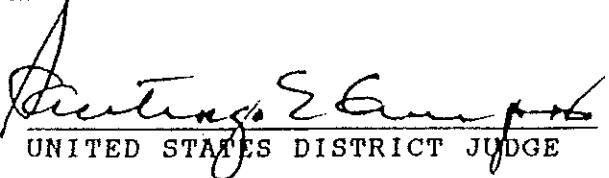
THIS MATTER having come before the Special Master and the Court upon the Joint Motion of the State Engineer, Plaintiff, and three (3) community acequias, Acequia de Chamita, Acequia de los Salazares, and Acequia de Hernandez, Defendants, to adopt the Stipulation of the court-appointed expert, John Baxter and the acequias' expert, Dr. Stanley Hordes as to facts relevant to the priority dates of the aforesaid acequias; the Court being duly advised in the premises, finds that the motion is well taken and should be granted.

IT IS THEREFORE HEREBY ORDERED, ADJUDGED, AND DECREED, that the Court adopts the Stipulation of facts relevant to the priority dates of the Acequia de Chamita, Acequia de los Salazares, and Acequia de Hernandez. The Stipulation is hereinafter attached and made a part hereof as Exhibit "A".



FURTHER IT IS ORDERED that the said Stipulation is binding only upon the Plaintiff, State Engineer, and the aforesaid three (3) acequias.

Done by the Court this _____ day of November, 1995.


District Judge
UNITED STATES DISTRICT JUDGE

Approved:

Vickie L. Gable
Special Master

STIPULATION AGREED TO BY DR. STANLEY HORDES AND DR. JOHN BAXTER

JUNE 8, 1995

1. In 1598 Juan de Oñate led a large expedition out of San Bartolomé in present Chihuahua to establish a permanent settlement in New Mexico. In this endeavor he was accompanied by 10 Franciscan friars and 129 citizen-soldiers and their families.
 2. The Oñate expedition arrived at present San Juan Pueblo on July 11, 1598.
 3. With the assistance of 1,500 Pueblo Indians, Oñate initiated a project to build an acequia on the ~~east~~ bank of the Río Grande.
 4. In ~~1600~~ Spanish settlers moved to a new settlement across the Río Grande to a location directly west of the Pueblo of San Juan, north of the Río Chama, at the partially abandoned Pueblo of Yuque-Yunque, which the Spanish authorities named, "San Gabriel". *Spanish*
 5. The Spanish settlers promptly established an irrigation system at San Gabriel, constructing an acequia taken from the waters of the Río Chama. This acequia irrigated wheat, barley, corn and other garden crops. San Gabriel was located in the area now known as Chamita. *Aug 11, 1598*
 6. About 1608, some Spanish settlers left San Gabriel and relocated at the present site of Santa Fe. *Santa Fe 1610 o abandonada*
 7. The Pueblo Revolt of 1680 resulted in the destruction of virtually all of the locally-generated records in New Mexico from the founding of Santa Fe to 1680. It is thus impossible to determine how many Spanish settlers remained at San Gabriel after 1608, or the nature and extent of Spanish settlement at San Gabriel through the 17th Century based on contemporary documentation.
 8. In 1714 Antonio de Salazar received a grant of land in an area that is irrigated today by the Salazar acequia on the south bank of the Río Chama and west bank of the Río Grande, near their confluence.
 9. In his petition to Governor Juan Ignacio Flores Mogollón, Salazar indicated that his great-grandfather, Alonso Martín Barba, had owned these lands prior to the Pueblo Revolt of 1680. Salazar also requested the same access to farmlands that Martín Barba has used.
- Stanley Hordes 6/9/95* *John P. Baxter 6/15/95*
- 1992
ABSTRACT
TO RQVEMADA